



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 456

IN THE MATTER  
OF  
MICHAEL MURPHY

## DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Michael Murphy pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L.c. 268B, §4(j).

On September 11, 1991, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A. The Commission has concluded its inquiry and, on September 10, 1992, found reasonable cause to believe that Mr. Murphy violated G.L. c. 268A, §3.

The Commission and Mr. Murphy now agree to the following findings of fact and conclusions of law:

1. At all times here relevant, Mr. Murphy was the Winchendon Department of Public Works (DPW) superintendent. As such, Mr. Murphy was a municipal employee as that term is defined in G.L. c. 268A, §1.

2. As the DPW superintendent, Mr. Murphy is responsible for the maintenance and reconstruction of the town roads in Winchendon and for the operation of the Winchendon Highway Department.

3. In the Town of Winchendon, the town paving contract (herein after referred to as "the contract") is put out to bid and awarded annually by the selectmen. The contract covers Winchendon's paving needs for a 12 month period.

4. As the DPW superintendent, Mr. Murphy participates in the annual bidding and contract award process. Winchendon annually advertises the availability of the contract. The advertising is conducted by the town manager. When the bids are received, Mr. Murphy reviews them and makes a recommendation to the town manager. The contract is generally awarded to the lowest bidder. After the contract is awarded, Mr. Murphy (as the DPW superintendent) and the town manager are responsible for determining town paving needs covered by the contract (i.e. for ordering paving and/or paving materials pursuant to the contract) and for overseeing the contractor's performance of its obligations under the contract.

5. The P.J. Keating Company (Keating) is an asphalt manufacturing and construction corporation doing business in Massachusetts. During the times here relevant, a substantial portion of Keating's business consisted of municipal paving contracts.

6. In June 1987, Keating submitted the low bid for the Winchendon contract. Mr. Murphy reviewed the bids and recommended the selectmen award the contract to Keating, which they did on June 22, 1987. Mr. Murphy supervised Keating's performance of the contract.<sup>1/</sup> Thus, he insured that the proper thickness of asphalt was laid down, signed delivery slips acknowledging the town's receipt of specified amounts of materials, and reviewed and approved Keating's bills regarding the materials delivered.

7. At some point in 1987, Mr. Murphy approached one of Keating's employees (who was involved in paving Winchendon streets pursuant to the contract) and asked him if Keating would pave Mr. Murphy's driveway at his personal residence in Winchendon.

8. On the morning of July 29, 1987, Keating did a certain amount of paving in Winchendon pursuant to the contract. After completing that paving, Keating employees went to Mr. Murphy's house, waited for the asphalt material to be delivered from the Keating plant and then paved Murphy's driveway.

9. Approximately 60 tons of asphalt materials were used to pave Mr. Murphy's driveway at a fair market cost of approximately \$2,000 (labor and materials).

10. Mr. Murphy never expected to pay nor was he ever billed by Keating for the driveway. Keating absorbed the material and labor costs associated with Mr. Murphy's driveway.<sup>2/</sup> Mr. Murphy informed the town manager on the day of the paving that Keating was going to pave his driveway, however, Murphy did not tell the town manager that Keating was providing the driveway to him (Murphy) without charge nor did he put the disclosure in writing.

11. In paving Mr. Murphy's driveway without charge, Keating employees were motivated in part by the fact that Mr. Murphy was the Winchendon DPW superintendent who, as such, had and would perform official acts regarding Keating's paving contracts with the town. While Mr. Murphy believes that the driveway was in part given to him by Keating because of a past relationship he had with Keating when he was in the private sector, Mr. Murphy acknowledges that Keating gave him the driveway in part because of his DPW superintendent position and to foster goodwill.<sup>3/</sup>

12. Section 3(b) of G.L. c. 268A prohibits a municipal employee from accepting anything of substantial value for himself for or because of any official act or acts within his official responsibility performed or to be performed by him. Anything with a value of \$50 or more is of substantial value for §3 purposes.<sup>4/</sup>

13. By receiving a free driveway from the Keating employees, while, as the Winchendon DPW Superintendent, he was supervising Keating's contracts, and was involved in prior and would be involved in future contract awards to which Keating was or would be a bidder, Mr. Murphy received a gift of substantial value for himself for or because of acts within his official responsibility performed or to be performed by him.<sup>5/</sup> In so doing, Mr. Murphy violated G.L. c. 268A, §3(b).<sup>6/</sup>

In view of the foregoing violations of G.L. c. 268A, §3(b), the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Mr. Murphy:

1. that Mr. Murphy pay to the Commission the sum of two thousand dollars (\$2,000.00) as a civil penalty for violating G.L. c. 268A, §3(b);
2. that Mr. Murphy pay to the Commission the sum of two thousand dollars (\$2,000.00) as a forfeiture of the unlawful benefit he received in accepting the free driveway;<sup>7/</sup>
3. that Mr. Murphy will act in conformance with the requirements of G.L. c. 268A in his future conduct as a municipal employee; and
4. that Mr. Murphy waive all rights to contest the findings of facts, conclusions of law and terms and conditions contained in this Agreement or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**Date: October 20, 1992**

<sup>1/</sup>Keating received the following amounts from Winchendon for street paving: FY 87 - \$229,554.86; FY 88 - \$203,745.16; FY 89 - \$52,711.17; and FY 90 - \$56,824.22.

<sup>2/</sup>The Town of Winchendon did not pay for either the materials or the labor involved in paving Mr. Murphy's driveway.

<sup>3/</sup>Even when a private relationship exists between the giver and the public employee who is in a position to affect the giver's interests, the evidence must show that the private relationship was the motivating factor for the gift or §3 is violated. *See In re Flaherty*, 1990 SEC

<sup>4</sup>*See Commonwealth v. Famigletti*, 4 Mass App. 584 (1976).

<sup>5</sup>As the Commission stated in *In re Michael*, 1981 SEC 59, 68,

A public employee need not be impelled to wrongdoing as a result of receiving a gift or a gratuity of substantial value in order for a violation of Section 3 to occur. Rather, the gift may simply be an attempt to foster goodwill. All that is required to bring Section 3 into play is a nexus between the motivation for the gift and the employee's public duties. If this connection exists, the gift is prohibited. To allow otherwise would subject public employees to a host of temptations which would undermine the impartial performance of their duties, and permit multiple remuneration for doing what employees are already obligated to do — a good job.

<sup>6</sup>In a similar disposition agreement, Keating acknowledged violating §3(a) when its employees provided the above free driveway to Mr. Murphy, who as the DPW superintendent had and would perform official acts regarding Keating's paving contracts with the town. *In re Keating*, 1992 SEC 610.

<sup>7</sup>The Commission made clear in *Advisory No. 8* that in appropriate cases it would seek to recover any economic advantage any person obtained in violating §3.